

July 2011 - Vermont Bar Examination Essay Questions

QUESTION 1 - July 2011

PLEASE NOTE: QUESTION 1 was a "Multistate Performance Test" (MPT) will not be answered here.

QUESTION 2 – July 2011

PLEASE NOTE: QUESTION 2 was a "Multistate Performance Test" (MPT) will not be answered here.

QUESTION 3 – July 2011

Adam owns 20 acres of land in Shelberg, Vermont. His home is located on the property. Adam's property previously encompassed 30 acres until he sold a subdivided 10 acre parcel (the "Camp Parcel") to Betsy for the purpose of Betsy's development of Camphaven, a summer camp for children. The Camp Parcel has no frontage on any public road. Betsy told Adam of her intended use of the Camp Parcel prior to their execution of the purchase and sale contract.

Adam accesses his home via a 50-foot-wide paved driveway onto the public road, Zebra Road. His driveway ends at the 2-car garage attached to his home. Before selling the Camp Parcel to Betsy, Adam historically accessed the Camp Parcel via a gravel drive which branches off of his paved driveway at a point shortly before the paved driveway reached Adam's garage. The purchase and sale agreement for the sale of the Camp Parcel from Adam to Betsy included a provision that: "Adam will grant an easement over the Old Road, for ingress and egress from Zebra Road to the Camp Parcel." The deed from Adam to Betsy included the statement that: "Included herewith is an easement over the Old Road for Betsy's ingress and egress to the Camp Parcel."

Several days after the closing on the Camp Parcel, Adam began to see Betsy coming and going from Camp Parcel with construction materials and other supplies for the operation of Camphaven. Over a three week period, Adam saw Betsy make this trip 10 times. On each of these occasions when Adam observed Betsy coming and going, she traveled on Adam's paved driveway and on the gravel road. On two of these occasions, Adam and Betsy waved to one another but they never spoke.

Four weeks after the closing, on Monday July 11, Adam observed Betsy driving a school bus of children up his paved driveway. He ran out to meet her before she reached the turnoff onto the gravel road. Adam told Betsy that the easement in the deed was for her ingress and egress only and that any other persons coming on his property were trespassers. He also told her that she could not use his driveway or the gravel road to access the Camp Parcel at any time. He told her the "Old Road" mentioned in the deed is

an abandoned trail over rough terrain that extends from Zebra Road but ends about 10 feet short of the property line separating Adam's property from the Camp Parcel. It is impassable by motor vehicle without prohibitively expensive improvements. The "Old Road" is located far from Adam's driveway and the gravel drive Betsy had previously used to access the Camp Parcel.

Betsy told Adam that Camphaven was ready to begin operation that morning. She also told him that without access to the Camp Parcel off of his driveway and the gravel road, she would suffer damages including not only the lost fees from that week's campers but also the possible destruction of the reputation of Camphaven from which she might never recover. Adam replied: "Too bad, now get off my property!"

1. Discuss the procedural remedies that may be available to Betsy to allow her to use the driveway and gravel drive for her second summer session beginning on July 25.
2. Discuss and analyze the arguments Betsy should make in order to obtain permanent relief through reformation of the easement in the deed.
3. Discuss and analyze the arguments Betsy should make to obtain an easement to access Camphaven other than through reformation of the easement in the deed.
4. If Adam were to sue Betsy for trespass, what defense(s) Betsy should raise and how should those defenses be asserted? Discuss.

QUESTION 4 -- July 2011

Client comes to lawyer to seek advice. Two years ago, Friend and Client started a lawn care business. They had no written agreement. They shook hands that it would be "fifty-fifty," and that they would each work full-time during the lawn care season. Friend then suggested to Client the idea for a business name: "Clean, Green, with a Sheen!" Client agreed, and Friend registered the trade name with the Vermont Secretary of State in Friend's own name.

Business boomed. The trade name is now very well known in the area. Friend is no longer interested in working in the business, but is demanding half of the profits. He is threatening to sell the trade name to Rival if Client does not agree to his demands for half of the money regardless of whether Friend does any work.

1. Describe the legal relationship of Client and Friend.
2. Analyze who owns the rights to the trade name, whether Friend has the right to sell the trade name, and whether there are steps other than litigation that Client should immediately take.

3. Assume that Client and Friend cannot negotiate a resolution to their disagreements. Analyze whether Client has any right to continue the business without Friend, and the steps Client would have to take to enforce any such right.
4. Assume that after negotiations Friend sells his interest in the business and the trade name to Client. Analyze Client's options for organizing and operating this business, and discuss your recommendation.

QUESTION 5 -- July 2011

At 9 p.m. on a recent rainy evening, Vermont State Police received a phone call from Joe Citizen who advised that he had observed a male driving erratically in a green Subaru truck with Vermont license plate APC123. Mr. Citizen also advised that he had observed the Subaru nearly collide with another vehicle and that he had followed the Subaru to 15 Wildflower Terrace in Woodfield, Vermont. Police Dispatch contacted Trooper Trudeau who was already in the vicinity.

Trudeau pulled up on the street in front of 15 Wildflower Terrace at 9:15 p.m. The lights were off and there was no vehicle or any activity visible from the street. Citizen was waiting for him and repeated his account to Trudeau. After Citizen departed, Trudeau walked down the driveway toward the home. Trudeau approached the attached garage. Peering through the window of the closed garage door with a flashlight, he observed a rain-spattered black Subaru truck inside with Vermont plate ABC123. Trudeau ran a plate check, which revealed that the vehicle was registered to Doris Driver.

Trudeau then walked to the front door of the home and rang the doorbell several times. No one answered. As Trudeau turned to leave the premises, the automatic garage door opened. Trudeau approached the garage to find a woman sitting in the vehicle, with the driver's side window open. From the driveway, Trudeau identified himself and stated that he was responding to a report of erratic driving in the vicinity. The woman identified herself as Doris Driver. Trudeau asked Driver whether she had been operating the vehicle that evening. She responded that she had driven home "about 30 minutes ago," and was headed out to visit one of her neighbors. Trudeau detected a faint odor of alcohol, and observed that Driver's speech was slurred. In response to Trudeau's further questions, Driver stated that she had consumed two glasses of wine with dinner around 6 p.m. that evening, but said that she had not consumed any alcohol in the past 30 minutes.

Trudeau ordered Driver to step outside of the vehicle into the driveway to perform field sobriety tests. Driver failed the sobriety tests. Trudeau then advised Driver that he was placing her under arrest to be charged with the crime of driving under the influence (DUI). Trudeau advised Driver of her *Miranda* rights and took her to the police station. At the station, having declined representation, Driver provided a breath sample indicating that her blood alcohol content was one and a half times the legal limit.

1. Did Trooper Trudeau act lawfully when he entered Doris Driver's property and shined his flashlight into the garage? Discuss.

2. Are Doris Driver's statements in response to Trooper Trudeau's questions from the vehicle in her garage admissible against her? Discuss.
3. Did Trooper Trudeau act lawfully when he ordered Doris Driver to step outside of the garage to perform sobriety tests? Discuss.
4. Assume that Doris Driver was backing out of her driveway and onto the street when Trooper Trudeau arrived at the property. Would it have been lawful for Trudeau to conduct an investigatory stop? Discuss.

QUESTION 6 - July 2011

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Forty years ago, Testator executed a valid will under which he devised his home to the trustee of a trust. Testator's will directed the trustee to

retain the home to ensure that my Daughter has a comfortable residence throughout her life. The home shall not be sold until Daughter dies. After Daughter's death, I direct the trustee to sell the home and to distribute the sale proceeds to Charity, a charitable corporation organized to end homelessness in Capital City.

Thirty years ago, Testator died. At the time of his death, Testator still owned the home, which was located in Capital City in a quiet residential neighborhood of single-family homes near both a local college and the city's business district. The business district was commercially successful, but it had attracted a large number of homeless people.

During the last 30 years, the character of the neighborhood where the home is located has changed dramatically. Many apartment buildings have been built, greatly increasing population density and noise. Several bars and restaurants catering to college students have also opened in the formerly residential blocks near the home. Stores in the city's business district have moved to suburban shopping malls, and the vacated buildings have been converted to bars and dance clubs. This shift has increased public rowdiness, but it has also been associated with a marked decline in the number of homeless individuals in the business district.

Daughter recently decided that she wants to move from the home to a rental apartment in a quieter and less congested neighborhood. Daughter consulted a real estate agent, who correctly told her that the home is worth about \$300,000 and will easily sell for that amount.

Daughter asked the trustee to sell the home, to hold the expected sale proceeds of \$300,000 in trust, and to use the proceeds and the income to pay Daughter's rent, which will be about \$2,000 per month. The monthly income from the \$300,000 trust, however, is expected to be only \$1,000.

When the trustee attempted to contact Charity to discuss Daughter's request, he discovered that Charity no longer exists.

The trustee has consulted the law firm where you work for advice on these questions:

1. 1. Can the terms of Testator's testamentary trust be reformed to permit the sale of the home? Explain.
2. Assuming that the trust can be reformed to permit the sale of the home, can the trustee also obtain authorization to use the sale proceeds and the earnings thereon to pay Daughter's rent? Explain.
3. After Daughter's death, will the trust assets pass to Testator's estate? Explain.

QUESTION 7 - July 2011

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There are two nursing schools in State A: Public Nursing School (Public) and Private Nursing School (Private). Public is an agency of the state government, and all its faculty and staff are state employees. Private is owned by a private corporation and receives no direct funding from the state. The State A Board of Education regulates the curriculum of each nursing school and certifies all graduates of the two nursing schools as eligible to become licensed nurses in State A.

Both Public and Private have a long-standing policy of restricting admission to women. Neither school has ever admitted a male applicant. There has been general discrimination against women in State A in the health care field. Historically, however, 95 percent of State A nurses have been female.

A male resident of State A wants to be a nurse. The man first applied to Private and was denied admission. His rejection letter from Private stated that he was "not eligible to enroll because Private was established as an all-female institution and does not admit or enroll male students."

The man next applied to Public and was again denied admission. His letter from Public stated that "you are not eligible to enroll because Public does not enroll male students. Mindful of the historical discrimination that women have faced in State A, our state has established Public to remedy this discrimination and provide opportunities for women who want to work in the growing field of health care as nurses." The letter continued, "Because your grades and test scores would have been sufficient to admit you if you were female, we offer you admission to our new Male Nursing Opportunity Program instead."

The Male Nursing Opportunity Program allows male residents of State A to become nurses by studying at a nursing school in an adjacent state. Graduates of the program are

certified by the State A Board of Education as eligible to become licensed nurses in State A. However, the Male Nursing Opportunity Program facilities are not as modern as those at Public, the faculty is not as experienced, and graduates of the Male Nursing Opportunity Program do not enjoy the same employment opportunities as graduates of either Public or Private.

1. Has Private violated the man's rights under the Equal Protection Clause of the Fourteenth Amendment? Explain.
2. Has Public violated the man's rights under the Equal Protection Clause of the Fourteenth Amendment? Explain.